



**BILLING CODE 4410-13**

**DEPARTMENT OF JUSTICE**

**[Docket No. CRT 142]**

**Notice of Report on Lawful Uses of Race or Sex in Federal Contracting Programs**

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability on the Department of Justice's website of an updated report regarding the legal and evidentiary frameworks that justify the continued use of race or sex, in appropriate circumstances, by federal agencies to remedy the current and lingering effects of past discrimination in federal contracting programs.

**FOR FURTHER INFORMATION CONTACT:** Andrew Braniff, Deputy Section Chief, Employment Litigation Section, Civil Rights Division, Department of Justice, (202) 514-3831, [EMP.Lit@crt.usdoj.gov](mailto:EMP.Lit@crt.usdoj.gov). If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

A substantial body of evidence, both quantitative and qualitative, demonstrates the continued pervasiveness of discriminatory barriers that impede the full and fair participation of businesses owned by women and people of color in government contracting. The nature and breadth of the evidence discussed in the report updates and expands on prior reports—in 1996 and 2010—and supports the compelling interest in the continued use of federal programs that contain remedial measures to eliminate

discriminatory barriers to contracting opportunities for businesses owned by women and people of color. *See Adarand v. Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

Section I of the report provides an overview of the legal landscape surrounding constitutional challenges to the use of race and sex in contracting programs that are subject to strict and intermediate scrutiny, including a discussion of some recent cases challenging various federal and state contracting programs. Section II reviews a substantial body of statistical evidence published in the last decade, which demonstrates the existence of significant disparities in the amount of public contracting dollars going to businesses owned by women and people of color as compared to their availability for such contracts. Section III explores the various ways that discriminatory barriers can limit access to contracting markets, resulting in the statistical disparities identified in Section II. These include race and sex discrimination by procurement agencies and prime contractors, whether overt or subtle; exclusion from business networks crucial to making the connections necessary to learn about and compete effectively for contracting opportunities; and discrimination by bonding companies and suppliers. Section IV discusses stark disparities in the formation and success of businesses owned by women and people of color as compared to other businesses. Section V addresses discriminatory barriers that impose significant burdens on businesses owned by women and people of color—affecting both their ability to access capital to form and grow businesses in the first instance as well as their ability to compete effectively for contracts. Finally, Section VI addresses how the economic downturn that began in 2020 as a result of the COVID-19 pandemic has disproportionately affected businesses owned by women and people of color.

Evidence discussed in the report is listed in the three appendices. Appendix A identifies congressional hearings from 2010 to 2021 that address challenges facing business owned by women and people of color. Appendix B identifies dozens of disparity studies published between 2010 and 2021. Appendix C identifies additional studies and documentation pertaining to the issues discussed in the report.

The report is available on the Department of Justice's website at:  
<https://www.justice.gov/crt/page/file/1463921/download>.

Dated: January 20, 2022.

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